

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1242 - SB 1398

February 10, 2023

SUMMARY OF BILL: Enhances the punishment for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl, carfentanil, remifentanyl, alfentanil, and thiafentanil, from a Class C felony to a Class B felony, for any amount 0.5 grams or more but less than 15 grams, and for any amount less than 0.5 grams if a weapon was involved or if the offense resulted in death or bodily injury to another person.

Lessens the penalty for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl derivatives and analogues from a Class B felony to a Class C felony, for any amount less than 0.5 grams if no deadly weapon was involved or if the offense did not result in death or bodily injury to another person.

FISCAL IMPACT:

Increase State Expenditures – Net Impact – \$1,109,900 Incarceration

Assumptions:

Fentanyl Enhancement: Class B Felony to Class A Felony

- Pursuant to Tenn. Code Ann. § 39-17-417(k) and § 39-17-432, the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver a controlled substance is punishable one classification higher if certain criteria is met.
- It is reasonably assumed some individuals charged with a Class B felony, pursuant to Tenn. Code Ann. § 39-17-417 and § 39-17-432 under current law, will be charged with a Class A felony as a result of the proposed legislation.
- Pursuant to Tenn. Code Ann. § 9-4-210, this analysis estimates the highest cost for admissions in the next three years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding three years in length surpass the window of this analysis and will not significantly impact incarceration costs.

Fentanyl Enhancement: Class C Felony to Class B Felony

- Pursuant to Tenn. Code Ann. § 39-17-408(c), fentanyl, carfentanil, remifentanyl, alfentanil, and thiafentanil are Schedule II controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-417(c)(2)(A), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver less than 15 grams of fentanyl, carfentanil, remifentanyl, alfentanil, and thiafentanil is a Class C felony with a fine of up to \$100,000.

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- The proposed legislation enhances the penalty for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil, from a Class C felony to a Class B felony, for any amount 0.5 grams or more but less than 15 grams.
- Additionally, the proposed legislation enhances the penalty for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil, from a Class C felony to a Class B felony, for any amount less than 0.5 grams if a weapon was involved or if the offense resulted in death or bodily injury to another person.
- Based on information provided by the Department of Correction (DOC), there have been 393.9 Class C felony admissions for offenses under § 39-17-417(c) each year over the last ten years.
- This analysis estimates that 15 percent, or 59.1 (393.9 x 15%), of admissions each year result from convictions for fentanyl.
- Of those 59.1, this analysis estimates that 10 percent, or 5.9 (59.1 x 10%), of fentanyl admissions will involve less than 0.5 grams and remain a Class C felony offense.
- This analysis estimates the remaining 90 percent, or 53.2 (59.1 x 90%), of current Class C felony fentanyl admissions will involve more than 0.5 grams but less than 15 grams, or less than 0.5 grams but involved a weapon or death or bodily injury to another and be enhanced to a Class B felony.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- After adjusting for pre-trial jail credits, the average time served for a Class B felony offense is 2.88 years and the average time served for a Class C felony offense under 39-17-417(c) is 1.01 years.
- Accounting for recidivism rates, the proposed legislation will result in 32.73 admissions annually serving an additional 1.87 (2.88 – 1.01) years.
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ (700)	FY23-24
\$ 602,100	FY24-25
\$ 1,140,700	FY25-26

Fentanyl Derivatives and Analogues: Decreased Punishment

- Pursuant to Tenn. Code Ann. § 39-17-406(b)(48), fentanyl derivatives and analogues are Schedule I controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-417(b), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver less than 15 grams of fentanyl derivatives and analogues is a Class B felony with a fine of up to \$100,000.

- The proposed legislation lessens the penalty for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl derivatives and analogues, from a Class B felony to a Class C felony, for any amount less than 0.5 grams if no deadly weapon was involved or if the offense did not result in death or bodily injury to another person.
- Based on information provided by the DOC, there have been 110.7 Class B felony admissions for offenses under § 39-17-417(b) each year over the last ten years.
- This analysis estimates that 15 percent, or 16.6 (110.7 x 15%), of admissions each year result from convictions for fentanyl derivatives and analogues.
- This analysis estimates that 90 percent, or 14.94 (16.6 x 90%), of admissions will involve more than 0.5 grams and remain a Class B felony offense.
- This analysis estimates that 10 percent, or 1.66 (16.6 x 10%), of admissions will involve less than 0.5 grams and not involve a deadly weapon or result in death or bodily injury to another person and be lessened from a Class B felony to a Class C felony.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- After adjusting for pre-trial jail credits, the average time served for a Class B felony offense is 2.88 years and the average time served for a Class C felony offense under 39-17-417(b) is 1.86 years.
- The proposed legislation will result in 1.66 admissions serving 1.02 years less (2.88 – 1.86), post-trial.
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The estimated decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ 100	FY23-24
\$ (3,900)	FY24-25
\$ (30,800)	FY25-26

- Pursuant to Public Chapter 1007 of 2022, costs that include both increases and decreases are to be netted out on an annual basis for the next three fiscal years, with the cost increases based on the highest of the next three fiscal years and cost decreases based on actual estimated decreases for each of the three fiscal years; therefore, the recurring net increase in incarceration costs will be the following over the next three-year period:

Net Increase in State Expenditures	
Amount	Fiscal Year
\$ (600)	FY23-24
\$ 598,200	FY24-25
\$ 1,109,900	FY25-26

- The recurring net increase in incarceration costs based on the highest of the next three fiscal years is \$1,109,900.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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